

THE THIRD BRANCH

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of the
Federal
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Expanding Caseload Fuels Judiciary Request for Resources

Submitting the smallest funding increase requested in more than 20 years, representatives of the federal Judiciary asked a House subcommittee to adequately fund the courts in the coming year so they can cope with anticipated increases in case filings.

"Our workload is increasing, nearly across the board, and if Congress approves the President's requests for the Department of Homeland Security and the Department of Justice, and bankruptcy filings remain high, our workload will continue to grow," Judge Julia Gibbons, chair of the Judicial Conference Budget Committee, told the House Appropriations Subcommittee on Financial Services and General Government.

As a result, Gibbons said, the Judiciary is requesting a 6.8 percent funding increase for fiscal year 2011.

"In order to handle a growing workload and sustain a fair and expeditious delivery of justice, the federal

See Expanding Caseload on page 4



Representative José Serrano, chair of the House Appropriations Subcommittee on Financial Services and General Government, spoke with Judge Julia Gibbons, chair of the Judicial Conference Budget Committee, and AO Director James Duff following the Judiciary's hearing in March.

Judicial Conference Approves Steps to Improve Public Access

Digital audio recordings, a new fee schedule for PACER users, and a pilot program to publish opinions through GPO's FDsys, are all steps the Judicial Conference took this month to improve public access to the federal courts. For more, see the story on page 2.

INTERVIEW

Committee Tackles Issues Affecting Judicial Branch

Judge D. Brock Hornby was appointed to the U.S. District Court for the District of Maine in 1990, and he served as chief judge of the district from 1996 to 2003. From 1988-1990, he served on the Maine Supreme Judicial Court and from 1982-1988 as a U.S. magistrate judge. Hornby currently chairs the Judicial Conference Committee on the Judicial Branch.

Q: What is the jurisdiction of the Committee on the Judicial Branch and how does it establish its priorities?

A: The Committee on the Judicial Branch addresses problems affecting the Judiciary as an institution and the status of federal judicial officers. Our primary role is to advise and make recommendations to the Judicial Conference on matters relating to judges' total compensation, which includes salaries, benefits, and other related concerns. We promote interest in the judicial office as a

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Judiciary Approves PACER Innovations to Enhance Public Access

The Judicial Conference has approved key steps to improve public access to federal courts by increasing the availability of court opinions and expanding the services and reducing the costs for many users of the Public Access to Electronic Court Records (PACER) system. At its biannual meeting this month in Washington, D.C., the Conference voted to:

- Allow courts, at the discretion of the presiding judge, to make digital audio recordings of court hearings available online to the public through PACER, for \$2.40 per audio file.
- Adjust the Electronic Public Access fee schedule so that users are not billed unless they accrue charges of more than \$10 of PACER usage in a quarterly billing cycle, in effect quadrupling the amount of data available without charge. Currently, users are not billed until their accounts total at least \$10 in a one-year period.
- Approve a pilot in up to 12 courts to publish federal district and bankruptcy court opinions via the Government Printing Office's Federal Digital System (FDsys) so members of the public can more easily search across opinions and across courts.

The Conference approved the plan to make digital audio recordings available on PACER after a two-year pilot project showed significant public interest in accessing these files. Prior to the pilot, such access was possible only by obtaining a CD recording from a court clerk's office for \$26. During the pilot, Internet access to the same content cost eight cents, but the \$2.40 fee approved today was deemed by the Conference to be reasonable and come closest to recouping, but not exceeding, costs. Digital audio recording is used in most bankruptcy and district courts

(where magistrate judges account for most of the usage).

For printed court documents, the \$10 fee waiver affects tens of thousands of PACER users. In fiscal year 2009, about 153,000 PACER accounts holders—nearly half of all active accounts—did not receive a bill. For that 12-month period, a quarterly waiver would have affected an additional 85,000 accounts—resulting in 75 percent of all active accounts not receiving bills. Analysis of fiscal year 2008 billing data showed a similar impact.

As mandated by Congress, electronic access to court information is funded through reasonable user fees, and not through taxes paid by the general public. Last year, PACER received more than

Judicial Conference of the United States, March 16, 2010



Seated: (LtoR) Chief Judge Sandra L. Lynch (1st Cir.); Chief Judge Dennis Jacobs (2nd Cir.); Chief Judge Anthony J. Scirica (3rd Cir.); Chief Judge William B. Traxler, Jr. (4th Cir.); Chief Justice John G. Roberts, Jr.; Chief Judge Edith Hollan Jones (5th Cir.); Chief Judge Alice M. Batchelder (6th Cir.); Chief Judge Frank H. Easterbrook (7th Cir.); Chief Judge James B. Loken (8th Cir.).

Standing, Second Row: (LtoR) Chief Judge Mark Wolf (D. Mass.); Chief Judge William K. Sessions III (D. Vt.); Chief Judge Harvey Bartle III (E.D. Pa.); Chief Judge David Bryan Sentelle (D.C. Cir.); Chief Judge Paul R. Michel (Fed. Cir.); Chief Judge Alex Kozinski (9th Cir.); Chief Judge Robert H. Henry (10th Cir.); Chief Judge Joel F. Dubina (11th Cir.); Chief Judge James P. Jones (W.D. Va.); and Judge Sim Lake (S.D. Tex.).

Standing, Third Row: (LtoR) Judge Solomon Oliver, Jr. (N.D. Ohio); Chief Judge Richard J. Young (S.D. Ind.); Judge Charles R. Breyer (N.D. Cal.); Judge Robin J. Cauthron (W.D. Okla.); Judge Rodney Sippel (E.D. Mo.); Judge Myron H. Thompson (M.D. Ala.); Chief Judge Royce C. Lamberth (D. DC); Chief Judge Jane A. Restani (Int'l Trade); and James C. Duff, Dir, AOUSC.

Photo credit: Steve Petteway, Collection of the Supreme Court of the United States.



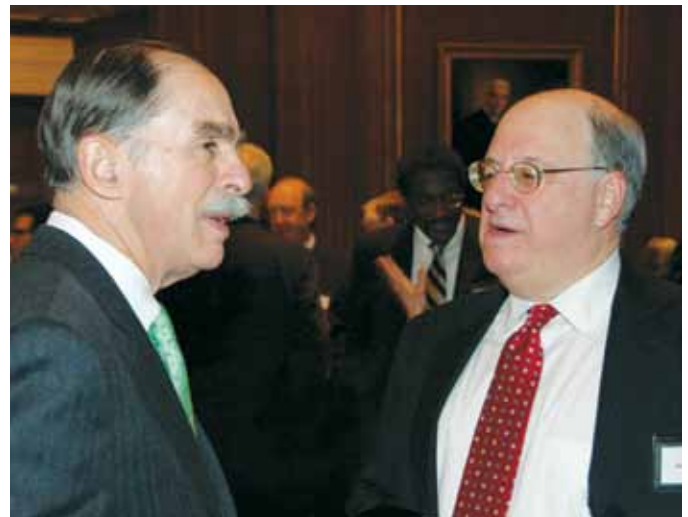
Judge Robert Hinkle (N.D. Fla.), chair of the Conference Advisory Committee on Evidence Rules, Chief Justice John Roberts Jr., and Judge M. Margaret McKeown (9th Cir.) chair of the Conference Committee on Codes of Conduct.



Supreme Court Justice Sonia Sotomayor and Judge Janet C. Hall (D. Conn.), chair of the Conference Committee on Federal-State Jurisdiction.



Judicial Conference Members Judge Robin J. Cauthron (W.D. Okla.) (back to camera), Chief Judge David B. Sentelle (D.C. Cir.), and Judge Solomon Oliver, Jr. (N.D. Ohio.).



Judicial Conference members, Chief Judge Harvey Bartle, III (E.D. Pa.), and Chief Judge Mark Wolf (D. Mass.).

360 million requests for electronic access to information from the over 33 million federal cases that have documents online. The Electronic Public Access fee revenue is used exclusively to fund program expenses and enhancements that increase public access to the courts. As a result, PACER is a very economical service: the charge for accessing filings, other than opinions, is just eight cents per page, with a maximum charge of \$2.40 regardless of the length of a document. At federal courthouses, public access

terminals provide free PACER access to view filings in that court, as well as economical printouts (priced at ten cents per page). The charge for copies from the paper case file in the clerk's office was—and remains—50 cents a page.

All court opinions are available through PACER free of charge, and that will not change. The pilot project to make bankruptcy and district court opinions also available through the Government Printing Office's system will enhance public access to those opinions.

The Judiciary is conducting a comprehensive assessment of the its Electronic Public Access Program services to identify potential enhancements to existing services and new public access services that can be provided to litigants, the bar, and the public. All active PACER users were welcomed to participate in at least one of the assessment surveys, focus groups, or interviews. The results of that assessment will be available by July 2010.

*See **Judicial Conference** on page 5*

courts must have the resources needed to do their work," she said. "We do not have programs that we can cut in response to a budget shortfall."

Gibbons appeared with Administrative Office Director James C. Duff before the subcommittee.

In their opening remarks both subcommittee chair, Representative José Serrano (D-NY), and ranking minority member, Representative Jo Ann Emerson (R-MO), expressed their concerns about the recent attack at the Lloyd George U.S. Courthouse in Las Vegas, Nevada, in which a Court Security Officer was killed and a U.S. Marshall wounded. Serrano assured the Judiciary the Committee would do all that it can to protect employees and members of the public in and around federal facilities.

Caseload Expected to Increase

"The President's budget increases spending on border and immigration enforcement efforts, particularly along the Southwest border, as well as spending for prosecuting financial fraud and drug offenses," said Gibbons. "This influx of crime fighting resources will result in more criminal cases in our district courts, more work for our probation and pretrial services officers, and increased caseload in our defender services program, which provides assigned counsel to eligible defendants."

She noted that additional courts of appeals cases could be seen as the DOJ adds immigration judges and staff to clear the backlog of cases in the immigration courts.

The civil caseload in the federal courts is expected to increase 6 percent, driven by asbestos diversity case filings and anticipated class action litigation involving imported drywall; the criminal caseload is

expected to increase 3 percent; and a 20 percent increase is expected in bankruptcy filings, with the economy as a major factor in the number of personal bankruptcies. Work per-case also increased as a result of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, with new docketing, noticing and hearing requirements required for bankruptcy courts.

In addition, the number of convicted offenders under the supervision of federal probation officers, which hit a record in 2009, is expected to increase 3 percent in 2010. To improve supervision of this workload, probation officers have begun using evidence-based practices (EBP), a tool that involves identifying and applying clinical and administrative practices proven to consistently produce specific, intended results.

"We believe that the Judiciary's evidence-based approach to offender reentry and our strong focus on achieving positive outcomes will reduce the high costs associated with recidivism," Gibbons said.

In evaluating risks to the public and the costs of recidivism, Gibbons noted that the Bureau of Prisons spends \$71 per day to incarcerate an offender, but the Judiciary spends only \$10 per day to supervise an offender in the community.

For fiscal year 2011, the Judiciary is seeking a 6.8 percent overall increase, or \$469 million, above the fiscal year 2010 enacted appropriations level. The courts' Salaries and Expenses account, which funds clerks and probation offices nationwide, requires a 5.9 percent increase.

Eighty-two percent (\$385 billion) of the increase requested for fiscal year 2011 would fund adjustments to base for pay and benefit increases for judges and staff, space rental increases, an anticipated increase in

the number of on-board senior Article III judges, and costs associated with Criminal Justice Act representations.


The remaining \$84 million requested is for program enhancements, including:

- \$43 million for additional staff and costs to address workload requirements, as well as additional magistrate judges and staff;
- \$26 million for telecommunications and information technology enhancements;
- \$5 million to increase the non-capital panel attorney rate to \$141 per hour; and
- \$2 million for court security, including a national contract for vehicle barrier maintenance at courthouses and a facial recognition pilot program; and education and training enhancements at the Federal Judicial Center.

Gibbons noted that the Judiciary has a comprehensive strategy to cut costs—such as rent caps, courtroom sharing, an altered salary progression policy for court staff and law clerks, and IT server consolidations.

"We are not only judges and staff supporting the Third Branch," she told the subcommittee, "we are also citizens and taxpayers and we recognize fully the need for fiscal austerity in a period of mounting federal debt."

But while these initiatives have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice, she stressed the importance of the Judiciary receiving the resources needed to address its workload needs.

"I ask the Committee to continue this commitment to the federal courts by providing funding sufficient to allow us to perform our statutory and constitutional duties," Gibbons said. 



Judge George Z. Singal (D. Me.), chair of the Conference Committee on Judicial Resources.



Judge D. Brock Hornby (D. Me.) chair of the Conference Committee on the Judicial Branch and Judicial Conference member, Judge Charles R. Breyer (N.D. Cal.)

The US Party/Case Index is a tool that enables users to locate a case across the federal courts. The application has been running in its current format since September 1999, and currently receives over 200,000 searches daily. A new version of the search tool, which includes additional search capabilities and result formats, has been developed and will be deployed under the new name PACER Case Locator this month. 

Enhanced Support for Judiciary's Money Managers

"We believe our court unit executives are the best leaders and managers in the federal government," said Barbara Anderson, who leads the Administrative Office's financial management training team. "They are mindful of and take seriously their obligations to the public. They continually seek out information and practical education that helps them do the right thing in the right way."

Now those federal court unit executives (CUEs)—from bankruptcy, district, and circuit courts as well as from probation, pretrial services and federal public defender offices—have a new resource. About 30 CUEs recently participated in a two-day training program, presented by Anderson and others in the courts and AO, that offers Judiciary-specific guidance on various aspects of financial management.

The program's agenda included discussions and question-and-answer sessions on appropriations law, budget, procurement, and various "dos" and "don'ts" for certifying officers within the federal Judiciary. Participants represented a cross-section of financial managers, both veterans and those newly in their jobs.

The call for continuing training was sounded by the Judicial Conference Budget Committee in 2006, when it endorsed a program in recognition "that training must be a dynamic process that takes into account staff turnover in critical positions in the courts, changes in rules and regulations, new decisions of the Judicial Conference, and acts of Congress, as well as continued financial systems enhancements." Development of the program was assigned to the AO and is the latest addition to a comprehen-

sive training plan that has been implemented over the past several years.

"We're planning a total of seven workshops this fiscal year to meet a pent-up demand, and perhaps three workshops a year in the future," Anderson said. "We are committed to classes of 30, give or take a few participants. Restricting the class size allows each CUE to share ideas and experiences on applying appropriations law principles to everyday financial decisions in the courts."

An online appropriations law program also is available. And coming soon is a quick-reference financial handbook for court executives, available in print and online.

"The handbook is designed to give new CUEs an orientation about all their financial management responsibilities," said Court Financial Management Liaison Cam Burke. "It covers their duties in the audit, budget, finance, travel, procurement, and property areas. It is our hope that every new CUE will use this handbook in support of their mission to manage public funds in a professional, accurate, and responsive manner."

The handbook will offer an overview and provide recommendations, and also feature links to the much lengthier Guide to Judiciary Policy, which is the authoritative source for financial management policy.

Christine Castelleo, chief deputy clerk of the U.S. Bankruptcy Court for the Eastern District of North Carolina since August 2009, enjoyed the pilot seminar and looks forward

See **Support** on page 9

Most Federal Court Filings Increase in 2009

Filings of civil, criminal and bankruptcy cases all increased during fiscal year 2009, as did the number of persons under post-conviction supervision and the number of cases opened in the federal pretrial services system. Only filings of appeals declined, due largely to a drop in appeals involving the Board of Immigration Appeals.

Statistics on the fiscal year 2009 workload of the federal courts, for the period from October 1, 2008 through September 30 2009, are available in the *2009 Judicial Business of the United States Courts*, online at www.uscourts.gov/judbususc/judbus.html.

U.S. Courts of Appeals

In fiscal year 2009, overall filings in the regional courts of appeals declined 6 percent to 57,740. Filings rose for criminal and bankruptcy appeals, and in original proceedings. Criminal appeals rose to 13,710, an increase of 43 cases over last fiscal year. Bankruptcy appeals rose 3 percent to 793. Original proceedings increased 2 percent to 3,700.

Civil appeals declined 2 percent to 30,967. Administrative appeals fell 26 percent to 8,570, due mainly to a drop in appeals involving the Board of Immigration Appeals. Challenges to BIA decisions, which had grown 13 percent in 2008, fell 27 percent in 2009 to 7,518. Prisoner petitions declined 4 percent to 16,249, following a 9 percent increase in 2008.

Appeals by pro se litigants declined 1 percent to 27,805, after climbing 11 percent in 2008. Nearly half of the pro se filings are prisoner petitions, which fell 3 percent in 2009 to 14,513.

U.S. District Courts

Total filings of civil and criminal cases in the U.S. district courts

increased 4 percent to 353,052 in FY 2009.

Civil Filings

Civil case filings rose 3 percent, increasing by 9,140 cases to 276,397. The number of civil cases filed per authorized judgeship grew to 408 from 394 in 2008.

Federal question cases—those actions under the Constitution, laws, or treaties of the United States in which the United States is not a party in the case—grew 1 percent to 136,041.

Federal question filings involving consumer credit increased 53 percent (up 2,143 cases), in part because of the downturn in the economy.

Contract actions grew 7 percent to 8,061 in response to increased filings of maritime attachment cases in the Southern District of New York involving tangible assets such as vessels, chattels, real property and bank accounts. Filings of federal question private foreclosure cases tripled to 1,517. Diversity of citizenship cases totaled 97,209 as the courts handled more cases related to asbestos and civil rights cases dealing with employment.

Filings with the United States as plaintiff or defendant declined 2 percent to 43,144. Filings related to immigration laws rose 39 percent to 2,277 as habeas corpus filings addressing alien detainees (up 398 cases) and other filings involving immigration (up 387 cases) jumped substantially.

Cases with the United States as plaintiff fell 8 percent to 8,834 as filings of defaulted student loans dropped 18 percent. Cases with the United States as defendant declined 1 percent to 34,310, mainly as a result of a 7 percent decrease in prisoner petitions.

The number of civil trials grew 1 percent to 5,309 as 46 of the 94 district courts reported higher numbers of civil trials.

Criminal Filings

Criminal case filings rose 8 percent to 76,655, and the number of defendants climbed 6 percent to 97,982 in 2009. This is the highest number of cases since 1932. Criminal cases filed per authorized judgeship grew from 105 in 2008 to 113 in 2009.

Increases occurred in cases related to immigration, fraud, marijuana, traffic and sex offenses. Immigration filings jumped 21 percent to 25,804. This growth resulted mostly from filings addressing improper reentry by aliens—80 percent of all immigration cases—and fraud and misuse of visas and entry permits.

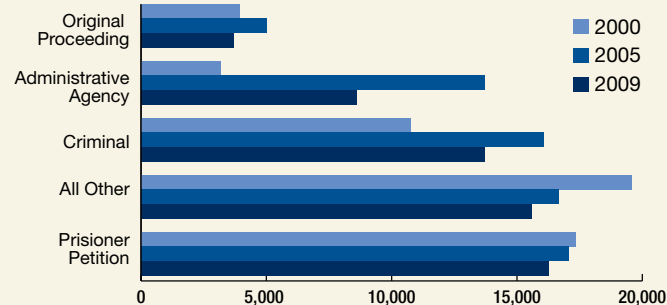
Overall drug cases rose 5 percent to 16,636 cases and defendants charged with drug crimes grew 4 percent to 30,144. The 2009 rise in drug filings occurred mainly in the southwestern border districts.

Filings of fraud cases rose 8 percent to a new record of 8,355. In 2009 fraud filings surpassed firearms and explosives filings to become the third-largest offense category. The increase stemmed from a surge in filings addressing identification documents and information. Filings of cases involving attempts and conspiracy to defraud rose 35 percent.

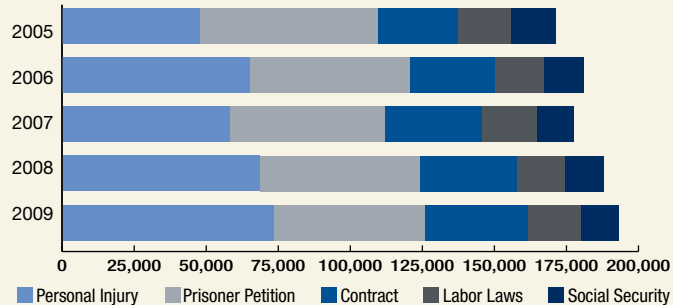
Increases in immigration, drug, and fraud cases were largely a result of increased filings in one of more of the five southwestern districts: the District of Arizona, Southern District of California, District of New Mexico, Southern District of Texas, and Western District of Texas.

Excluding transfers, the federal courts concluded proceedings against 95,206 defendants, an increase of

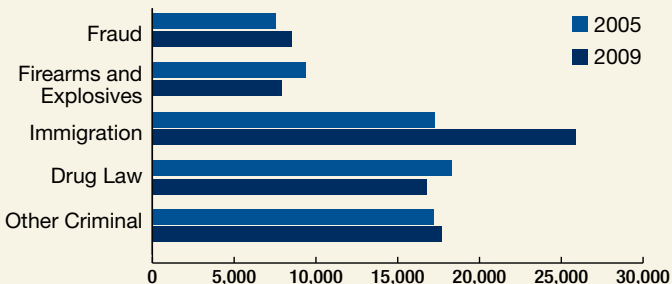
Appeals Filed, by Type



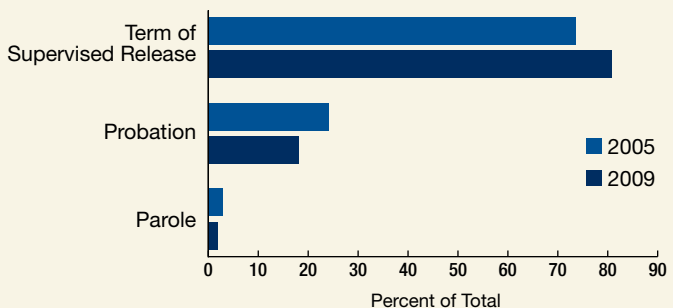
Civil Cases Filed, by Type of Case



Criminal Cases Filed, by Offense



Post-Conviction Supervision as of September 30



4 percent over 2008. Of these defendants, 86,314 were convicted, a 91 percent conviction rate.

Bankruptcy Filings

In fiscal year 2009, a total of 1,402,816 bankruptcy petitions were filed in the U.S. courts, an increase of 35 percent from 2008 and the largest number of bankruptcy filings in any fiscal year since 2005. Filings exceeded 2008 totals in all districts except the District of the Northern Mariana Islands. The largest percent increases occurred in the District of the Virgin Islands (up 107 percent), the District of Arizona (up 83 percent), and the Central District of California (up 71 percent). Six additional districts—the Districts of Guam, Nevada, Utah, Hawaii, Delaware, and Wyoming—experienced increases of 60 percent or more.

During 2009, filings by debtors with primarily nonbusiness debts totaled 1,344,095, a 34 percent increase over 2008. Filings involving primarily

business debts totaled 58,721, a 52 percent increase over 2008.

Pretrial Services and Post-Conviction Supervision

The number of cases opened in the pretrial services system, including pretrial diversion cases, rose from 99,670 cases in 2008 to 105,294 cases in 2009, an increase of nearly 6 percent. Pretrial services officers prepared 100,959 pretrial services reports, up nearly 6 percent from 2008.

Immigration was the major offense involved in 36 percent of the cases opened. The proportion of pretrial services cases opened in which the major offense charged involved drugs fell from 31 percent in 2008 to 29 percent in 2009. Cases involving property offenses represented 13 percent of pretrial services cases opened this year. Cases involving firearms offenses dropped 4 percent.

In 2009 a total of 32,147 defendants were released with specified conditions such as pretrial services

supervision or location monitoring. Substance abuse treatment and testing were ordered for more than 33 percent of the defendants.

On September 30, 2009, the number of persons under post-conviction supervision was 124,183, an increase of nearly 3 percent over the 120,676 persons under supervision on the same date in 2008. Persons who served terms of supervised release following a release from a correctional institution rose more than 4 percent from 95,159 in 2008 to 99,140 in 2009.

The proportion of post-conviction cases successfully terminated remained the same at 73 percent. Of those cases closed successfully, 18 percent were closed by early termination. Technical violations accounted for nearly 63 percent of the 13,470 revocations reported in 2009. Revocations for new offenses accounted for 5,047, or 10 percent, of the 49,410 supervision cases terminated in 2009.

Elevated: U.S. District Judge Beverly Baldwin Martin, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eleventh Circuit, February 1.

Elevated: U.S. District Judge Joseph A. Greenaway, Jr., as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Third Circuit, February 24.

Appointed: F. Keith Ball, as U.S. Magistrate Judge, U.S. District Court for the Southern District of Mississippi, January 29.

Appointed: Kendall J. Newman, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of California, February 8.

Appointed: Douglas E. Miller, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Virginia, February 1.

Appointed: Catherine E. Bauer, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of California, February 26.

Appointed: James P. Smith, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Georgia, February 22.

Elevated: U.S. District Judge Philip P. Simon, to Chief Judge, U.S. District Court for the Northern District of Indiana succeeding U.S. District Judge Robert L. Miller, Jr., February 3.

Elevated: U.S. Bankruptcy Judge Arthur J. Gonzalez, to Chief Judge, U.S. Bankruptcy Court for the Southern District of New York, succeeding U.S. Bankruptcy Judge Stuart M. Bernstein, February 1.

Elevated: U.S. Bankruptcy Judge Robert E. Grant, U.S. Bankruptcy Court for the Northern District of Indiana, succeeding U.S. Bankruptcy Judge Harry C. Dees, Jr., January 9.

Senior Status: U.S. Judge Michael Daly Hawkins, U. S. District Court for the District of Arizona, February 12.

Senior Status: U.S. Judge Blanche M. Manning, U.S. District Court for the Northern District of Illinois, February 1.

Retired: Territorial District Court Judge Alex R. Munson, District Court for the Northern Mariana Islands, February 28.

Retired: U.S. Bankruptcy Judge Richard L. Bohanon, U.S. Bankruptcy Court for the Western District of Oklahoma, February 24.

Retired: U.S. Bankruptcy Judge Walter Homer Drake, Jr., U.S. Bankruptcy Court for the Northern District of Georgia, January 31.

Retired: U.S. Bankruptcy Judge Paul J. Kilburg, U.S. Bankruptcy Court for the Northern District of Iowa, January 31.

Retired: U.S. Bankruptcy Judge James W. Meyers, U.S. Bankruptcy Court for the Southern District of California, February 28.

Retired: U.S. Magistrate Judge James E. Bradberry, U.S. District Court for the Eastern District of Virginia, January 31.

Retired: U.S. Magistrate Judge Howard T. Snyder, U.S. District Court for the Middle District of Florida, January 31.

Retired: U.S. Magistrate Judge Douglas F. Eaton, U.S. District Court for the Southern District of New York, February 28.

This month, *Milestones* exceeded the available space. Please visit Third Branch online at www.uscourts.gov/ttb/2010-03/index.cfm to read the complete *Milestones* for March.

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JUDICIAL BOXSCORE

As of March 1, 2010

Courts of Appeals

Vacancies	20
Nominees	9

District Courts

Vacancies	84
Nominees	22

Courts with "Judicial Emergencies"	31
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Up-to-date information on judicial
vacancies is available at <http://www.uscourts.gov/judicialvac.html>

A "Soft-Spoken" Leader, Scirica Honored by Judicial Conference

The March 2010 Judicial Conference marked the last meeting Chief Judge Anthony J. Scirica (3rd Cir.) attended as a member, and his last meeting as chair of the Executive Committee. In appreciation and respect, the Conference presented him with a resolution, that read in part:

"Judge Scirica has been an outstanding leader. Soft-spoken in manner, but commanding in intellect and insight, he has earned the deep respect of the Executive Committee, the Judicial Conference, and judges throughout the country. His wise counsel is sought by many Conference committee chairs, and his exceptional diplomatic skills have helped to ensure the smooth consideration by the Judicial Conference of a

Photo credit: Steve Pettaway, Collection of the Supreme Court of the United States.




Chief Justice John G. Roberts, Jr. presented the Judicial Conference resolution to Chief Judge Anthony Scirica.

number of potentially divisive issues. Judge Scirica has worked tirelessly to ensure that the Judicial Conference speaks with one voice on behalf of the Judiciary whenever possible. At the same time, he has vigorously promoted the indepen-

dence of the Judiciary as a co-equal branch of government.

Judge Scirica is committed to serving the federal Judiciary in the furtherance of the administration of justice. His wisdom, thoughtfulness, and graciousness are extraordinary and much appreciated in his capacity as chief judge, chair of the Executive Committee, colleague, and friend."

Scirica was chair of the Executive Committee of the Judicial Conference from May 1, 2008 until 2010, and a member of that Committee and the Conference for 4 years.

He previously served as a member of the Advisory Committee on Civil Rules (1992–1998), a member and chair of the Committee on Rules of Practice and Procedures (1998–2003), and a member of the Judicial Panel on Multi-District Litigation (2006–2008). 

Support continued from page 5


to the handbook. "When I first got the job, I went to a course sponsored by the Department of Treasury's Financial Management Services. It was good, but contained some information more relevant to the Executive Branch," she said. "This training is specifically for us, and is hugely beneficial."

Although a unit executive for 13 years, Northern District of New York Clerk of Court Lawrence Baerman found much to like about the pilot program. "There are a lot of gray areas in appropriations

law, and they can require a lot of discussion," he said. "As CUEs we would prefer that all decisions fall into either black or white—you either can or cannot do something. Unfortunately, life is not always that simple, and a course like this can take away some of the ambiguities, as well as being a good refresher."

Charlene Hiss had been clerk of the U.S. Bankruptcy Court in Oregon for less than a month when she attended the pilot program. "This is bedrock information we need to know," she said. "The interaction we're having is clarifying some ambiguous areas for me."

U.S. District Court Clerk Tom Gould for the Western District of Tennessee, who also attended the pilot program, agrees. "This sort of training is critical. The public must have confidence in our ability to spend its money in a responsible way," he said.

"Virtually every dollar we spend comes from the taxpayers, and we have a responsibility to spend that money prudently, lawfully, and conscientiously," AO Deputy General Counsel Robert Loesche told the seminar audience. "Congress has the power of the purse, and we must play by its rules." 

lifetime calling. And we assist in the development of Third Branch relationships with Congress, the executive branch, media, bar, and the general public.

Q: The Committee has hosted meetings between judges and journalists since 1999. Why is it important for judges and journalists to meet? How are changes in the news media affecting the coverage of the federal courts?

A: The most recent Justice and Journalism program was held at the Newseum in November 2009 in Washington, DC. A group of about 20 federal judges and journalists met to discuss the changing nature of their professions. The Judicial Branch Committee, along with the First Amendment Center—a non-profit media organization that works to preserve and protect First Amendment freedoms through information and education—has held similar programs in circuits around the country over the last decade.

Education of the public, especially the news media, about the Judiciary and the role of judges in society remains a priority of the Committee. These programs provide rare opportunities for judges and reporters to discuss issues of concern and perhaps to dispel some of the tensions that tend to grow up between the courts and the media.

This is especially important now when so many print newspapers and legal publications are disappearing, and the “court beat” is rarely the assignment of just one reporter who has the time to learn the ropes. Fewer reporters from news organizations are covering the courts, which means public understanding of the

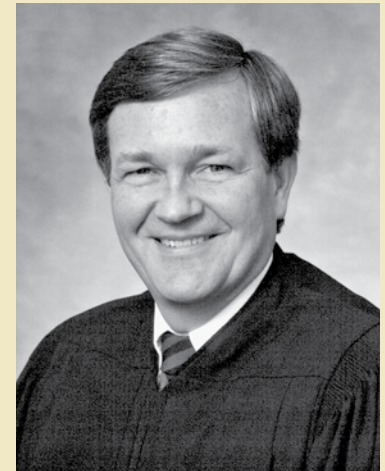
role and importance of judges and courts may diminish.

In addition, the traditional media are being replaced by a complicated mix of law-related Internet web sites, on-line publications, blogs and social media, many of which are coming from outside of journalism. Technology makes it possible for anyone, anywhere to publish a story on the courts.

The Committee would like to increase the flow of *accurate* information to the public and to do that we must find new ways to work with the old and new media.

Q: Your Committee recently formed a subcommittee on new media. Why was it formed?

A: As I mentioned, the Committee is looking for ways to increase the flow of reliable information about the courts and the justice system to the public. The charge of the subcommittee is to help the Judiciary do that by examining ways to use current and emerging new media tools and report findings and recommendations to the full Committee. Web 2.0 technologies have transformed the Internet into a place where users can share, socialize, collaborate, and create within loosely connected communities. These technologies present judges and courts with new and unconventional ways to educate the public about the important work of the federal Judiciary, as well as concerns about what is appropriate. It is our understanding that Executive Branch agencies have already begun using Web 2.0 technologies to communicate with the public about issues within their respective jurisdictions.



Judge D. Brock Hornby (D. Me.)

We're looking forward to exploring new avenues of communicating the federal Judiciary's story to the public.

Q: As chair of the Judicial Branch Committee, you communicate with Congress on issues of interest and concern to federal judges. Do you encourage other judges to do the same?

A: The Judicial Branch Committee believes it is mutually beneficial for the two branches if judges and Members of Congress periodically exchange views on matters relating to the administration of justice. While the Committee is mindful of the need for separation of powers, it knows that an open line of communication between the branches can sometimes serve the best interests of the nation. Over the years, the Committee has encouraged courts to invite their local Members of Congress to visit their courthouses for the purpose of acquainting them with the important work of federal judges and federal courts. Judges are best equipped to tell the story of their own court's workloads and needs. ↗

Q: The number of federal judges leaving the federal bench appears to be increasing. How does the departure of federal judges affect the administration of justice?

A: The number of judges stepping down from the federal bench is increasing. Between 2000 and 2009, 68 life tenured judges resigned or retired from the federal bench, up from 55 in the prior decade. Four more life tenured judges have announced their intention to resign or retire from the bench in 2010. Many of these judges step down from the bench for financial reasons. Not only have federal judges not received a real salary increase in two decades, in 7 of the past 17 years, they have been denied even the modest cost-of-living salary adjustments received by nearly every other federal employee. Regrettably, many of the judges who step down from the bench are from courts that have unfilled vacancies and can ill afford to lose seasoned, experienced judges. Their departure imposes a burden on the judge's remaining colleagues, who must handle their departed colleague's cases in addition to their own. When the result is delayed proceedings, the administration of federal justice is impaired.

Q: Senator Feinstein recently noted that inflation-adjusted pay for federal judges has declined dramatically over the last 30 years and, as you do, cited examples of judges being forced to leave the bench for financial reasons. Can you tell us about the legislative solution she proposes to correct this situation?

A: In the first session of the 111th Congress, Senator Dianne Feinstein (D-CA) introduced S. 2725, the Federal Judicial Fairness Act of 2009. This bill would allow judges to receive cost-of-living salary adjustments comparable to the higher COLAs given to General Schedule federal employees. The bill also would repeal section 140 of Public Law No. 97-92, which requires affirmative action by Congress each year before judges can receive their annual salary adjustment. Members of Congress and all other federal employees get their ECI pay adjustment automatically (unless Congress affirmatively acts to stop it), while federal judges and justices are the only category of federal employees that receive no COLA unless Congress affirmatively decides to grant them one.

S. 2725 enjoys bipartisan support in the Senate with its cosponsors, Senate Judiciary Committee Chairman Patrick Leahy (D-VT), and Senators Orrin Hatch (R-UT) and Lindsey Graham (R-SC). We are hopeful that the bill will pass Congress in the second session, but it still must be passed by the House.

Q: In 2006, the Judicial Conference adopted a private seminars disclosure policy, which the Judicial Branch Committee was instrumental in developing. Why was the policy developed and what does it require? And how have courts complied with the policy?

A: In September 2006, the Judicial Conference adopted a policy, effective January 1, 2007, that any nongovernmental source (other than a bar association or various judicial associations) that

pays for or reimburses a federal judge for expenses in connection with attending an educational event, must disclose to the Administrative Office its name and source of financial support for the program, the dates and location of the program, and the topics addressed. The AO promptly posts this information on the Judiciary's website so that it is publicly available. In turn, federal judges who accept travel, food, lodging, reimbursement or anything that would be considered a gift under the Ethics Reform Act Gift Regulations from these nongovernmental sources, must file, within 30 days of the conclusion of the program, a report with their clerk of court disclosing the dates of attendance, the name of the program provider(s), and the title of the educational program. This filing must be available on the local court's Internet website.

This policy was not designed to limit federal judges' access to knowledge. In fact, the Committee believes that continuing education of judges is in the public interest. In an age when technology is rapidly changing our lives, judges must keep up with society's pace or risk being unprepared to make informed and fair decisions. However, judicial attendance at privately funded educational programs had raised concerns. Some observers believed that judges might be influenced by the programs and their sponsors. To address these concerns and to provide greater transparency, the Judicial Conference adopted this policy of timely disclosure by educational program providers and by judges who attend the programs.

The required disclosure by program providers lets judges better

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determine whether they should attend a program and lets the public check on a local court's website to determine whether a judge has recently attended an educational seminar covered by this policy. It is our belief that this transparency and accountability has balanced judges' educational needs with the desire of the public to be informed promptly when judges meet those needs by attending privately funded programs.

Q: What are some other issues that the Committee is focusing on today or will be addressing in the near future?

A: There is a very real concern that some nominees for a federal judgeship might no longer see the position as a lifetime calling. As I mentioned before, federal judges are leaving the bench at an increasing rate, many to pursue

careers in litigation and mediation. The Committee believes that the federal court system as a whole will suffer if, as Justice Stephen Breyer termed it, a federal judgeship becomes a stepping stone to another career rather than its capstone. The Committee will continue to do everything it can to attract and retain federal judges.

We also are very aware of the continuing need to educate students and the public about the Constitution and the role of the courts. As retired Justice Sandra Day O'Connor has previously observed, "[k]nowledge of our Constitution and the role of our courts is not handed down in the gene pool."

Q: The Judicial Branch Committee addresses issues affecting judges. And after 20 years as a district judge you have a unique perspective on those issues.

A: Federal judges have the unique and challenging responsibility of applying, impartially, the rule of law to their fellow citizens who face life-changing events—ranging from severe physical, economic or psychic loss to lengthy imprisonment. It is often daunting to try to satisfy their quest for justice. Although we are sometimes wrong, we must never be unfair. When we do our job right, we do it calmly, with integrity, treating each person in the courtroom—parties, lawyers, victims and offenders—with dignity. During almost 20 years of service as a federal trial judge, I have found enormous satisfaction in this calling and I am proud to be a member of the cadre of federal judges. And it is the mission of the Judicial Branch Committee to ensure that the federal Judiciary remains a satisfying lifetime calling to which the very best of lawyers and other judges in this country aspire. 